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BY THE HOUSE OF DELEGATES,
March 2d, 1860.

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MINORITY REPORT

OF THE

COMMITTEE ON ELECTIONS,

MADE

IN THE HOUSE OF DELEGATES,

March 2d, 1860.

REPORT.

The undersigned, the only two Opposition members of the seven composing the committee on Elections, beg leave to present a Minority Report from that committee in reference to the contested election case of Jarrett vs. Purnell.

The memorial of Mr. Jarrett contains these assertions:

1st. That the election in Baltimore was illegal and fraudulent, and that the votes cast at that election should not have been counted, and that in fact no election was held in said city.

2nd. That many illegal votes were cast at that election for Mr. Purnell.

3rd. That many legal voters who desired to vote for Mr. Jarrett were prevented from voting for him by fear of violence, or through intimidation, and by actual violence.

4th. That the judges who presided at the election were not legally appointed.

And he claims that having received a majority of the legal votes in the rest of the State, cast at the said general election, he is entitled to be declared Comptroller of the Treasury.

Mr. Purnell presented his counter memorial or answer, which the undersigned append to this report, as disclosing the grounds of defence taken by him.

This memorial and counter memorial constitute all that was referred to the committee in connection with this case. There has been no memorial or remonstrance from other persons denying the right of Mr. Purnell to hold his office, neither his name nor office being embraced in any of the remon-

strances from the citizens of Baltimore heretofore presented to the Legislature on the subject of the election in that city.

The Constitution makes no particular provision for the trial of a contested election for Comptroller but authorises the Legislature to make provision for all cases of elections not therein provided for. In accordance with this section the act of 1853, ch. 244, declares that all contested elections for Comptroller shall be decided by the House of Delegates; and by the order of the House this case is referred to the committee on elections.

Before the adoption of the present Constitution, the House of Delegates in deciding upon the qualifications of their own members, were restrained by no law but the "law parliamentary," which they possessed the inherent right to decide to suit their own views; and it is a significant fact that the present constitution restrained this power by declaring that such decision shall be made "subject to the laws of the State." A book of authority produced before the committee by the counsel for the contestant asserts that "the same general rules by which courts of law are governed in regard to the evidence in proceedings before them, prevail in cases of controverted elections," (Cushing Sec. 211.) If this be true of election contests in the parliament of Great Britain, where it is exercising original jurisdiction with no other limitation than its own self imposed construction of its powers, it should surely apply with greater strictness in Maryland, where the Constitution itself has distinctly limited the powers of the Legislature in determining upon the qualifications of its own members: and especially should this rule be strictly applied in an exceptional case like the present, which is referred to the House of Delegates under an act of Assembly that might be repealed at any session of the Legislature.

Without the slightest intention of imputing improper motives to the majority of the committee, and with the most perfect respect for their integrity, the undersigned must declare that they regard the course of the majority during this investigation, as at variance in many respects with all the settled rules of procedure in such cases. Their first ruling was, that this case should be taken up and considered with that of Kerr vs. Gaither; although the one was a case confined to the city of Baltimore, and the other of an election co-extension with the State; a ruling adopted against the protest of both Messrs. Gaither and Purnell.

Mr. Jarrett commenced his evidence by offering a printed book purporting to contain the depositions of sundry witnesses taken by Messrs. Denmead and others, contesting the seats of Messrs. Krafft and others in the House of Delegates, and

proposed to recall some of these witnesses, and after re-swearing them, to examine them as to the correctness of their former evidence. To the production of this book, and its use in the mode proposed, Mr. Purnell objected, and in our judgment the objection should have been sustained. But it was overruled by a majority of the committee, and witness after witness was brought upon the stand, and in two sentences of assent couched in a few monosyllables, whole pages of testimony, as printed in the book were received in evidence against Mr. Purnell. It seems clear to the undersigned that this mode of procedure was inconsistent with all "the general rules by which courts of law are governed in regard to evidence in proceedings before them." The testimony was not taken originally by Mr. Jarrett, nor against Mr. Purnell, but was as to him, *ex parte*. No notice was ever given to him that it was to be used against him, so that he might have been present to cross-examine the witnesses or contradict their statements. There is no act of assembly giving authority to a justice of the peace to take testimony to be used in a case of a contested election for Comptroller, and therefore such evidence can no more be admitted in this case, than it could have been in the case of Delegates, if the act of assembly of 1844, ch. 284, had not been passed. If that act were not in existence it could not be pretended that the contestants of the seats in the House of Delegates could have used this testimony before the committee. And yet is was admitted against Mr. Purnell in the entire absence of any law authorising it to be taken or used against him. If in the most insignificant case, a citizen is entitled to be confronted with the witnesses against him, it seems strange that in this important contest such safeguards may be set aside, and testimony, taken without notice to the men whose rights are to be affected by it, may be admitted as if regular and competent in every respect. That testimony taken *ex parte* cannot be considered by the committee in an election case, is well established. Spaulding vs. Mead, Clarke & Hall, p. 157.

The verification of these depositions by the deponents does not remove the objection to their competency. In our opinion it is no more admissible to attempt to verify these depositions in the mode adopted by the committee, than to verify depositions made by entire strangers, or articles in a newspaper, by asking the witnesses to read the article and state whether its contents are true. The objection was insisted upon by Mr. Purnell's counsel, who contended that no authority could be produced in support of so singular a proceeding; and none was produced before the Committee, and we trust, for the sake of justice, that none such can be

found. On the contrary, we believe that no court of justice would allow a witness, when brought upon the stand, to produce a written or printed narrative, previously prepared, *ex parte*, and give it in evidence as his testimony in the case. One of the witnesses for the defence was the local editor of a Baltimore newspaper. Would it have been tolerated in this witness to produce his own editorial account of the election in Baltimore published at the time, and upon his swearing to the correctness of its statement, to deliver it to the committee as competent evidence? All the benefit of that most efficacious test of truth, a cross-examination, is virtually denied by this disregard of the immemorial forms of law, exhibited in this case, as we believe, for the first time in the history of legal investigation. No sufficient reason was assigned for thus departing from established forms. The averment that the limited time allowed the committee for this investigation would not permit the examination to proceed in the usual manner, proved to be as incorrect as it was illogical. Mr. Gaither examined a large number of witnesses at four or five sittings of the committee, thirty of them being examined in one day. All the witnesses produced by Mr. Jarrett might have been examined, by the aid of the stenographer, in the legal manner, in two days at the farthest; and more than two weeks intervened between the first session of the committee and the closing of his case by Mr. Jarrett.

But even if the apprehensions of the majority had proved well founded, the want of time to do full justice by a legal investigation was surely no reason why the committee should do injustice by conducting the examination illegally. If the time failed us, it was our duty to report that fact to the House, and to recommend legislation to avoid such results for the future. A judge with an overcrowded docket would hardly be justified in condemning the accused without a legal trial, for want of time to give a full hearing. It was no fault of Mr. Purnell that the investigation was not commenced sooner. The House met on the 4th of January, and the first meeting of the committee on the subject of Mr. Jarrett's memorial was not held until twenty days afterwards. The law is express that "if a petition is presented at so late a period of the session that an investigation cannot conveniently be had therein, no further proceedings will, in general, be allowed to take place."—Cushing on Legislation, pp. 77, 56.

This testimony, besides being *ex parte*, was given, in great part, in reply to leading interrogatories addressed to willing witnesses, and upon this ground would have been excluded by any court. The examination of Edward Horney furnishes an illustration of this. On page 13 he is asked how many

persons were prevented from voting at the 1st ward polls. He answers: "Witness cannot say; but this much witness can say, that he does not believe there were enough persons prevented from voting at the polls to change the complexion of the result on the Hill." This seems plain enough; but the witness is re-examined in chief upon the following very regular interrogatory on page 14: Q. "Do I understand correctly that, in answer to one of the questions propounded by Mr. Krafft, you stated that the number of persons who were prevented from voting at the polls were not sufficient to change the result of the vote; you meant to say, the number of persons only *whom you saw attempt* to vote, and who were prevented by violence, threats or intimidation were not sufficient to change the result?" *Answer.* "That is what I meant to say."

This, taken from the testimony of the first witness called, is a fair specimen of a great part of the interrogatories.

The testimony consists, too, in great part, of matters of mere hearsay, of vague rumors and statements derived from others, couched in language quite inconsistent with the illiterate manner of some of the witnesses. For these reasons, we believe that every word of this evidence should have been ruled out by the committee.

Mr. Purnell declined to waive his objections to the evidence by cross-examining these witnesses, and the only opportunity afforded the committee of forming an opinion as to the intelligence and honesty of the greater part of them consisted in hearing them speak half a dozen words in reply to two standing interrogatories.

In this manner, *one* witness was examined from the 1st, 2d, 3d, 4th, 6th, 7th, 8th, 11th, 12th, 17th, 19th and 20th wards in the city of Baltimore respectively; no witness from the 16th; *two* from the 5th, 10th, 14th and 15th wards, respectively; *three* from the 9th and 13th wards, and *four* from the 18th ward—making *thirty* witnesses in all out of the 112 whose testimony is printed in the book. It is proper to remind the House, that *the only evidence in the book which they, under their oaths, can consider at all in the determination of this case, is that of the* 30 *witnesses referred to above,* and that, for the purposes of this case, the rest of the book can no more be considered, than if it were not in existence. To regard any testimony *not taken in this investigation,* would be an outrageous violation of every principle of justice. It is equally clear that even if the remonstrances sent from Baltimore referred at all to the case of Mr. Purnell, (as they do not,) being mere assertions, not under oath, and not read

or examined by the committee, it would be the height of injustice to weigh them in this case at all.

Mr. Jarrett afterwards examined three additional witnesses, whose testimony had not been previously taken, and their evidence is free from many of the objections applicable to that in the book. He then announced that he had closed his case.

In the opinion of the undersigned all the evidence produced by Mr. Jarrett wholly failed to establish the averments of his memorial. Admitting it to be legal and competent, and making no allowance for the repetitions by some of the witnesses of occurrences testified to by others, and estimating the number of persons kept from voting at the largest number certified to by some of the witnesses, we submit that the following is a correct analysis of that proof:

WARDS.	PERSONS ASSAULTED.	ILLEGAL VOTES.	LEGAL VOTES REJECTED.	PERSONS PREVENTED FROM VOTING.
1st				
2d	1	6		1
3d	1			1
4th	2			4
5th		1		12
6th		61		62
7th	1			6
8th				
9th	28	2	10	47
10th	3	360		
11th			15	
12th	6			
13th	5			3
14th	3			
15th	8			5
16th				
17th		296		2
18th	2	2		2
19th	1			1
20th	1	6		
	62	734	25	156

The undersigned had seen so much violent denunciation of the proceedings at this election in Baltimore by portions of the press in that city, that it had become almost a settled conviction of their minds that everything connected with it was to be condemned as a matter of course. But they found themselves compelled to examine, and this House is now called upon to decide this case under the solemn sanction of an oath upon the evidence actually submitted to them *in this case*, and not upon impressions received from these reiterated assertions of newspapers, which at this very time are engaged with equal bitterness in accusing each other of receiving bribes to promote frauds upon the public, and in slandering the members of this legislature, of all parties, as dishonest and corrupt. Acting under the solemn sense of duty, the undersigned have examined this evidence with reference to the four grounds of complaint set forth in Mr. Jarrett's memorial, and they confidently assert that it does not support either of the charges.

1st. Mr. Jarrett does not charge that *riot* prevailed in the city of Baltimore, and the authorities are clear that he cannot give evidence of any facts not set forth in his memorial. Cushing, p. 56. But waiving this and assuming that the first vague averment in his petition is to be considered as a charge of riot, it is equally clear that no riot will avoid an election, "unless it is shown to have been founded *on system* or a *premeditation.*" Cushing, p. 68. Of this we confidently assert there is no proof to be found in this evidence.

2nd. The law as to the reception of illegal votes is plainly set down in all the books. In Cushing on Legislative Assemblies, the authority so frequently quoted by the majority of the committee, it is expressed on page 72, in these words, "an election may be controverted on the ground of the illegal reception or illegal rejection of votes by the returning officers; and in such a case if it is proved that votes *sufficient to change the majority*, have been illegally received or illegally rejected, the election will be set aside, and the candidate having the majority admitted; *but neither the reception of illegal, nor the rejection of legal votes* will have this effect *unless the majority is thereby affected.*" We suppose it will hardly be contended that evidence to any such extent was offered by Mr. Jarrett.

The most extravagant estimate made by all the witnesses of Mr. Jarrett as to the number of legal votes rejected does not exceed twenty-five, and of the illegal votes admitted, eight hundred—of course no such number could affect Mr. Purnell's majority of twelve thousand, seven hundred and eighty-three votes.

It was Mr. Jarrett's duty under this allegation to have gone into a full scrutiny of the poll, and this without regard to the length of time the investigation might occupy. The delay would have been no fault of his, if his assertions should prove to be well founded, but of the existing law in not prescribing some mode of taking evidence before the beginning of the session. But no objection was ever made by the committee to Mr. Jarrett's entering upon the scrutiny nor did he ever offer to do so.

3rd. The most liberal estimate of the number of votes, shown by Mr. Jarrett's evidence to have been deterred from voting by fear or intimidation does not exceed one hundred and seventy.

But nothing in the law of elections is better settled than that no such evidence should be received. The committee on elections of the House of Representatives, in the case of Biddle and Richard vs. Wing, (Contested Elections, p. 506,) hold this language, which expresses the well established principles of the law on this point. "Mr. Richard rests his claim to the seat on grounds which to the committee appear entirely novel. He does not pretend that he received the greatest number of votes that were actually given, *but that he would have received* the greatest number of votes, had not his friends at the election holden in Detroit, been intimidated from voting, by reason of the interference of deputy sheriffs and constables, who, it is alleged, under the pretence of keeping the peace, struck several persons on the head, and by that means prevented them, and many others from voting for Mr. Richard. The committee are of opinion that the duty assigned them, does not impose on them the examination of the causes which may have prevented any candidate from getting a sufficient number of votes to entitle him to the seat. If an elector, for any cause, should fail in presenting his vote for reception, the nature of the case precluded it from entering into the general result of the election, &c."

"In case of the application of the contrary doctrine, the greatest uncertainty must necessarily prevail, and should it be established it would be placing in the hands of a few riotous individuals, the power of defeating any election whatever. The law appoints a particular time and place for the expression of the public voice; when that time is passed, it is too late to enquire who did not vote or the reasons why."

This too was the doctrine contended for by the supporters of Gen. Whitfield, the delegate from Kansas, whose seat was contested on the ground that the presence of a large body of armed Missourians at the polls, intimidated voters of the Territory from casting their votes against him.

4th. There is not the slightest proof offered by the witnes-

ses, even tending to show any want of legality in the appointment of the judges of election, although this charge was made with quite as much solemnity and confidence as either of the others. We therefore declare, it as our opinion, that if there were no other evidence in the case, except that offered by Mr. Jarrett, Mr. Purnell's possession of his office ought not to be disturbed by this House.

But the evidence produced by the incumbent greatly strengthens the undersigned in this opinion. Mr. Jarrett having failed to attempt a scrutiny of the polls in the city of Baltimore, Mr. Purnell asked leave to do so, and to extend the examination to the counties of the State, alleging that he could prove numerous frauds and illegalities in those returns. This averment he demanded an opportunity of sustaining by proof; but this request was overruled by the majority of the committee upon the plea of want of time. That he was entitled to enter upon this investigation, it seems impossible to deny. Mr. Jarrett was allowed to offer evidence in reference to frauds in the city of Baltimore, because he alleged he could prove them. Mr. Purnell alleged with equal sincerity that he could prove bribery, violence and frauds in many of the counties of the State, and he should have been allowed the opportunity to do so. It was evidence clearly germain to the enquiry, and the House of Delegates cannot decide this case against Mr. Purnell in its absence without a shameful denial of justice.

Such an application is always granted by election committees, when demanded by the parties, and Purnell was entitled to it as necessary to a fair and impartial trial of his case, according to the laws of the land, as guaranteed to him by the Bill of Rights.

In the case of McFarland vs. Culpepper, Clark & Hall, 233, McFarland proved that the sitting member Culpepper, had received many illegal votes, and the committee say: "from the testimony it appears that Culpepper is not entitled to his seat, he not having a majority of the votes legally taken, but though McFarland appears to have a large majority of votes taken according to law, yet the committee are of opinion that the truth of this is doubtful; they are the more confirmed in this opinion from the sitting member having expressed his opinion, *that if he had time allowed him to make a scrutiny*, he would prove the election held in the other counties were also not conducted according to law."

Mr. Purnell then requested leave to enter upon a scrutiny as to Baltimore city alone, offering to produce the tickets voted, and the poll books, and to prove by respectable witnesses, that he received more than enough *legal* votes in Balti-

more city, to overcome the majority which Mr. Jarrett received in the counties together with his entire vote in the city. This offer was also overruled and the majority of the committee determined that they would only hear evidence upon the isolated point, "whether there was an election in Baltimore on the second of November."

Mr. Gaither then proceeded to adduce witnesses in his defence and a considerable number were examined from the different wards.

We deem it proper to say of these witnesses, whose testimony has been alluded to in slighting terms by the majority of the committee, that in intelligence and respectability they compared favorably with the average of those produced by Mr. Jarrett. They were almost all men of the middle age and upwards, of propriety of demeanor, who, though subjected to the most rigid cross-examination by skilful and astute counsel, delivered their evidence with clearness and apparent candor. Several of them were foreigners, who had voted without difficulty at the election.

They were wholly unimpeached, and the undersigned know of no considerations of justice or propriety which would allow them to credit all the witnesses of the contestants, in preference to all those produced for the defence.

It was attempted to diminish the force of their testimony by showing that many of them were connected with the political clubs of the American party; but only two or three of them were shown to have ever belonged to any such clubs. If the political affinities of witnesses are to be considered, it is worthy of note that every witness produced by Mr. Jarrett was a Democrat or Reformer, while several of those produced for the defence were Democrats and Reformers, whose party allegiance did not prevent them from testifying in favor of sustaining the election, although the result was unfavorable to the candidates of their own party.

It is objected that some of the witnesses for the defence were judges and clerks of election, and therefore able to see but little of what passed. It is true that some of those produced acted in that capacity, but *nine* of the thirty produced by Mr. Jarrett, viz: Messrs. Horney, Mowbray, J. P. Thomas, Martin, J. H. Thomas, Fosbenner, Swindell, Brotherton and Baughman, were also acting judges at the election, and are equally disqualified for the same reason, if it is in fact a disqualification. It is alleged that several of them remained at the polls but a short time; but such was also the case in regard to many of those produced by Mr. Jarrett.

It is said that the testimony was negative. How could it be otherwise? It was responsive to positive testimony given

a month before, in the absence of Mr. Purnell, and without notice to him; printed and shown to the witnesses, who, on an average, did not speak ten words in presence of the committee. The witnesses for the defence examined *as the law prescribes*, and rigidly cross-examined, were asked by counsel upon both sides as to those particular matters testified to by the witnesses for Mr. Jarrett. That they contradicted the contestant's witnesses in these particulars, only proved the existence of a difference between them which the committee was bound to reconcile or decide upon from the manner and appearance of the opposing witnesses.

A brief reference to the evidence of particular witnesses will illustrate the matter.

Thomas H. Martin testified in Baltimore to sundry matters set forth in the printed book. When called to testify in this investigation, his whole evidence consisted of a few words of assent, after which formality his whole *ex parte* statement was admitted against Mr. Purnell. He stated that he was a judge of election in the tenth ward; that all the judges were not present when the voting began; that he was present but a short time, during which Hinesley refused to allow the witness to take any of the tickets, or to allow Reformers to vote, but admitted Know-Nothing votes whenever offered; that no Reform challenger was permitted to stand at the window, and that upon remonstrating with Hinesley because he would not put a Reform ballot in the box, he was assaulted by him and compelled to leave the room.

Col. Samuel Houston, another judge at the same polls, swears that all the judges were in attendance when the voting began; that well known citizens were present as Reform challegers; that Martin and Hinesley were each taking Reform and American tickets with equal fairness, when the clerks declared that they could not record the names if two judges took tickets at the same time; that Martin, who was excited by drink, then insisted that he alone should take the ballots, but Hinesley insisted upon his equal right to do so for a while; and Martin accused him of dropping a Reform ticket on the floor, instead of placing it in the box. Col. Houston declares that search was made on the floor by himself and the Reform clerk for such ticket, and none such was found, and that the charge was untrue; that Martin offensively persisted in the statement, and finally received a blow from Hinesley, soon after which he left, stating that he would soon return. These two statements are presented to the committee, and they are to decide between them. Houston was properly examined and cross-examined according to law. Martin scarcely spoke half dozen words. Houston was proved to have lived

for years as book-keeper at Barnum's Hotel, and is as well known as any man in the State. He is supported by the evidence of ex-Mayor Spicer and Manly, while Martin is contradicted in many respects by Mr. Wallis, who testifies that until a period after Martin left, the Reformers had equal access to the polls with the Americans, and that in point of fact a large majority of the votes which had been cast, up to that time, were for the Reform ticket. Can there be a doubt as to which statement would be received under the circumstances of the case by an impartial judge?

The case of the Rev. Mr. Mair is noticed by Capt. Johnston, the election judge referred to in Mr. Mair's testimony. Johnston was subjected to a rigorous cross-examination, and we are sure every member of the committee present must have been satisfied from his testimony and the honest manner in which it was given, that the fears of the first named witness, and his scanty acquaintance with our language, had much to do with preventing him from understanding what actually took place at the polls between himself and the judge. The naturalization papers of Mr. Mair, produced by him before the committee, with a seal scarcely discernible to the sharpest vision, were found to have been properly described by Mr. Johnston in his evidence. In the absence of an attempt to impeach either of these witnesses, would any impartial tribunal necessarily believe the entire testimony of the one to the entire discredit of the other?

That the witnesses, after giving their direct testimony as to what they saw of the election, afterwards stated how this election compared with others they had witnessed years before, certainly cannot be regarded as a reason for undervaluing their direct testimony, if worthy of credence in other respects. But in our opinion it tends strongly to prove that wrongs similar to those which were formerly considered venial, have now, by change of circumstances, become to be regarded as utterly without palliation. These witnesses produced for the defence prove that this election—while marked by such disorder and violence as shows that under the influence of cheap whiskey and constantly recurring elections, we have improved upon the evil precedents of our English ancestors—was not accompanied by such violence and irregularity as rendered it void in law.

The forms of law, as to opening and closing the polls, and making the returns were all complied with. The witnesses for the defence swear that, with the exception of the usual crowding at some of the polls at their first opening, access to the polls was free throughout the day, and the returns show that notwithstanding the slight general interest taken in the

election by the Democrats, and the disposition manifested to allow it to go by default, 5335 votes were polled for Mr. Jarrett; that about the middle of the day, the reformers by concert of action, abandoned the polls, and that in some of the wards where they thus left, the election had been conducted up to that time, with an unusual degree of good order; that in many of the wards in the city, the reform movement was regarded by the Democrats with distrust, as a "Whig trick," in the language of one of the witnesses; and in those wards there was no regular reform organization. Such is the general scope of the testimony produced on the part of the incumbent.

Much stress was laid upon the fact, that improper places were selected for holding the polls, and this is commented on with severity by the majority, in one of their reports. In reference to no ward was the complaint more general than the 11th, it being insisted that the polls were located in a disreputable and unsafe neighborhood. It turned out however, upon the examination of one of the judges of the election, that the place where the polls were held was selected, not by the American judges, but by one of the most prominent leaders of the Reform party.

Continual reference was made in the testimony produced by Mr. Jarrett, and by the majority in their reports, to the *striped tickets* used by the American party at the election, as precluding the secrecy intended to be secured by the vote by ballot, the very ticket filed as an Exhibit, by Mr. Mowbray, on page 77 of the book, shows the unfounded nature of this assertion. There was no mark on the back of the ticket to identify it, and it was impossible to discover the mark upon its face when it was folded, as they always are, to be deposited by the voters. As well might it be alleged, that the secrecy of the ballot was invaded by the Reform tickets, which were proved to have been printed on larger paper than those of the American party.

The charge of a systematic or premeditated riot, is contradicted by every witness examined on the point.

It is no part of the intention of the undersigned to defend the political organizations called clubs, which were proved to exist in the city of Baltimore; butthe testimony adduced before them shows that such clubs are not of recent origin, and that the clubs of the Democratic party, glorying in the names of the "Bloody Eighths," "Double Pumps," "Calithumpians" and "Butt-Enders," are not behind their American cotemporaries in disorderly conduct.

Unfortunately it is too true that elections in Baltimore, as in all large cities have never been conducted without disorder.

We extract the following from the speech of the venerable General Samuel Smith in the case of Trigg vs. Preston, as reported in the volume of Contested Elections by Clarke & Hall, p. 82, showing the mode of conducting elections in those early days which we are accustomed to regard as especially pure—he said, "that at the elections in the Eastern States the citizens met in small bodies and conducted the business with that order and decency which became the true Republican character, but it was the misfortune of the Southern States that the citizens assembled in large bodies; hence it appears that an election in the Southern States is nothing but a nursery of superlative mischief. It was in evidence before the House that at the election one person had been seen with a club under his coat. But (sir,) said Mr. Smith, I suppose that five hundred of my constituents had clubs under their coats, so that if this be a sufficient reason for dissolving an election the committee may begin by dissolving mine. If the committee are to break up every election where persons are seen drunk they will have a great deal of work upon hand, sir, &c."

Such was an election in Baltimore many years ago, and if statements set forth in the resolutions passed a few days since by a party convention of that city be correct, rival "factions" in the same political organizations do not hesitate, at this day, "to manufacture majorities in many of the wards of the city," and to "gratify their insatiate thirst for rule by employing the services of hired ruffians calling themselves by filthy names." It is but just to say that such charges are understood by the community rather as the expression of exasperated political feeling, than the cool convictions of the judgment, but they prove that long practice in the abuse of political opponents begets a facility in the application of violent epithets even to political friends.

But the testimony for both sides further proves that whatever may have been the wish of the people of Baltimore as to other candidates, at the election in November, there was a general disposition felt to retain Mr. Purnell in the office, the duties of which he has discharged with a fidelity which has gained from his political opponents during this investigation, their unqualified approval. It is proved by Messrs. Wallis, Sangston, Thomas, and other Reformers and Democrats examined in the case, that the Reform movement was only designed to extend to municipal affairs and the candidates within the city alone, and that members of that organization were left free to exercise their preferences in the selection of State officers. It is further shown that a large number of the prominent Reformers had formerly been Whigs and Americans;

that Mr. Purnell led the American ticket more than a thousand votes; that *two-fifths of the Reform tickets were printed with the name of Mr. Purnell upon them for Comptroller;* that these tickets were voted and circulated at the polls by leading Reformers, and in one case at least, by a candidate of the Reform party, at that election, for judge of the Orphans' court. All this was proved by the witnesses produced by Mr. Jarrett, and recalled at a venture by Mr. Purnell. He applied to the committee for leave to summon others of the most distinguished members of the Reform party, to prove similar facts, and to show that if the election had been conducted without the slightest disorder, he would have been elected by a large vote. He further asked leave to prove that many of those who were alleged to have been kept from the polls were his own supporters; but this offer was overruled by the committee upon the ground that "the testimony would be cumulative," as was also his offer to introduce evidence in his own behalf, after the further progress of Mr. Gaither's testimony had been arrested by the majority of the committee, to show that violence and irregularity to the extent alleged in the memorial of Mr. Jarrett, did not characterise the election in November.

We will now proceed to consider the law of the case, as expounded by the majority of the committee:

The quotations on the subject of riots, from page 76 of Cushing on Legislative Assemblies, collected by the majority of the committee in their reports, are supported only by the old authorities cited in the foot notes. These venerable volumes are not accessible to the undersigned, and they cannot, therefore, determine how far they bear out the text. But we would be as reluctant to assist in engrafting these antiquated decisions in election cases of the times of James the First, upon the election law of this day, as to see the rulings of the venal judges who hunted Sir Walter Raleigh to his death, adopted by our courts, or the other corruptions and tyranny of that reign fastened upon our government. Nor is our respect for those ancient authorities at all increased by the remark of Cushing, on page 57, that "for many years previous to the year 1770, controverted elections had been tried and determined by the House of Commons as mere party questions, upon which the strength of contending factions might be tested." We trust that this law and this spirit of applying it may long be unknown to our State.

Even the more modern decisions in England in election cases would not be safe guides here, because such cases in that country since Lord Grenville's act in 1770, are conducted upon an entirely different principle from that pursued in this

country. Nor do those cases state the law as it now stands in England. As an evidence of this we refer to the authority quoted by the majority, "that wherever there has been an interruption of the proceedings by riot, &c., notwithstanding the officers may continue and finish the poll, &c., the election has been totally void." But by the Reform act the law in England now is, that "if overpowered by a mob the polling officers adjourns the polling and resumes it when it can be carried on without disturbance." Encyclopedia, 8th edition, Brittanica, article Parliament p. 296.

There is no necessity for going to the middle ages nor to England for authorities in elucidation of the law upon this subject. The matter has been frequently decided in our own country and in recent times. In the case of Trigg vs. Preston, contested elections p. 78 referred to by the majority; it was proved, says the committee of Elections that Capt. Preston the brother and agent at the election of the sitting member, was quartered near the Court House with 60 or 70 federal troops of which he had the command—that they were marched around the Court House where the voting was in progress several times during the election, and paraded close to the door—that they voted for Mr. Preston—that some of them threatened to beat any one who should vote for Trigg, and one of them knocked down a magistrate attending the election—that three soldiers stood at the door and refused to admit a voter because he said he would vote for Trigg—that the country people and soldiers got into an affray"—that guns were fired by the soldiers and other similar outrages prevailed, and they recommended that Mr. Preston should be unseated. The House upon argument by Mr. Nathaniel Macon, Gen. Samuel Smith and other able members, refused to adopt the report of the committee and Mr. Preston retained his seat, in this case the House acted upon the principle so well defined in the case of Biddle and Richards vs. Wing, referred to on page 506 of Contested Elections.

"In all cases of contested elections, where the question depends upon matters of fact which are controverted by the parties much difficutly is to be expected in coming to a decision, and where there is room for doubt, a disposition is often felt to return it to the people. This, however, ought not to be done where it is possible to ascertain what the result has been. "When the people in the exercise of their constitutional rights, have gone through with the process of an election according to the prescribed rules, they ought not to be deprived of the advantages therefrom, but for the most substantial reasons; no doubts which are capable of being solved ought to be permitted to operate against them—indeed, noth-

ing short of the impossibility of ascertaining *for whom the majority of the votes* have been given, ought to vacate an election."

But there is a more recent case which in our judgment decides that now under consideration. The seat of Hon. J. Morrison Harris, in Congress, was contested in 1858, by Wm. Pinkney White, Esq., upon the same grounds assigned by Mr. Jarrett, and an immense mass of testimony was taken going to show in a part of the District such riot, violence, intimidation, etc., as, was alleged, should cause the ejection of Mr. Harris from his seat. The testimony was much stronger than that in this case; it was regularly taken under the Act of Congress, and was free from many objections which exist in regard to this. But calm people looking over the cloud with which political excitement and high party feeling surrounded the case, could not avoid seeing that the disorder proved to exist, did not constitute such a *riot* in law, as rendered this election void, and that assuming the illegalities to be proved, still it was not *impossible to ascertain for whom the majority of the votes were given;* and the House of Representatives voted down a resolution reported by a majority of the election committee to unseat Mr. Harris. The resolution of the majority in this case, appended to their report appears to have been copied *verbatim* from the resolution in the case of Whyte vs. Harris, (Daily Globe, 16th and 17th, Dec. 1858.) In the face of this decision of the House of Representatives, made in reference to an election in the city of Baltimore less than two years ago, it cannot be very important to this House, how the House of Commons decided in reference to "the election of Pontefract, on the 28th of May, 1624," or that of "Southwark on the 10th December, 1702," referred to by the majority of the committee. It was the decision of a Democratic House of Representatives against a prominent Democratic contestant, whose talents and abilities were acknowledged by those who felt constrained by a high sense of duty, to retain his competitor in his seat.

But even if such riot, intimidation and violence had been proved in this case as should avoid the election in the city of Baltimore, the undersigned submit that the recommendation of the majority of the committee to install Mr. Jarrett, is unheard of and monstrous in the extreme. The whole vote of the State, at the election in November, was about 86,000. The vote of the city of Baltimore was about 23,000, being less than a third and more than one-fourth of the whole. Baltimore as a separate district elects a judge of the Court of Appeals, a commissioner of public works, and one-seventh of the House of Delegates.

The Constitution declares that the qualified electors *of the*

whole State shall choose the Comptroller; and yet the majority of the committee declare that three-fourths of the electors have the power to choose the Comptroller, and that the will of the remaining fourth is not entitled to any voice in the matter. If Mr. Jarrett is elected, by whom was he elected? By the electors of the State of Maryland? No; we are told there was no election in one-fourth of the State. He is elected, then, by the vote of the electors of *three-fourths of the State*, in the face of the requirement of the Constitution that the electors of the whole State shall choose the Comptroller. If Mr. Purnell is not legally elected, it is because part of the election is *void*, though he received a majority of all the votes. Neither can Mr. Jarrett be elected at a void election, in which he came far short of receiving a majority of the votes cast. If the vote of *one* city or county can thus be rejected upon the ground of illegality, and the vote in the remaining counties be allowed to elect, the vote of *two* counties can equally well be rejected, and the election be made by the balance of the State. And if *two* counties, why not *three* or *four* or *nineteen*, and the remaining county be taken as sufficient to elect the Comptroller. There is the same right to reject *nineteen* counties, as to reject *one*; the principle in both cases being the same. But the report of the majority in the case of Denmead *vs.* Krafft, asserts that it would be "unjustifiable" to declare that a legal election by *one-twelfth* of the voters entitled to vote can entitle a contestant to his seat. We submit, if this is true, where the legal vote is one-twelfth, it would be equally true where it is one-eleventh or one-tenth, or where, as in this case, the legal vote claimed to have been cast constitutes two-thirds of the entire vote. If the ruling of the majority in that case is true, it must be utterly erroneous in the present. By the same process the entire vote of the Eastern Shore might be rejected, and one-half of the counties in the State might be made to elect a Governor; or half the districts of a county to elect a member of the Legislature. This was actually once accomplished in this State in high party times, but it sealed forever the fate of the party which perpetrated the wrong. The returns from two districts of a county were found defective, and the committee of Elections of that day decided that the votes of the remaining districts could be counted to the exclusion of the faulty returns, and gave the seats to the candidates shown to have a majority in those districts. The temporary triumph of party was thus secured, and the election of a Governor was the fruit of the victory. The victors for a moment held

> ———"The barren sceptre in their gripe,
> Thence to be wrenched by an unlineal hand,
> No son of theirs succeeding."

The indignation of the people was justly aroused by this outrage on the right of suffrage, and the "Allegany fraud" stands condemned by the judgment of posterity, side by side with the "Hartford Convention." A similar disregard of the popular rights in the case of John Wilkes, made an unprincipled politician the most popular man in England.

The practice in such cases is perfectly settled in this country. In the case of Macfarlan *vs.* Culpepper, contested elections, p. 223, the committee say: "We are of opinion that even presuming the votes in Moore and Cumberland counties to have been legally taken, it would be improper to deprive the other three counties of their representation for the fault of their election officers; they therefore think it most proper to give the citizens of that district an opportunity to have another election, and they submit a resolution to that effect." In the case of Whyte *vs.* Harris, where frauds and riots were alleged to have occurred in part of the Congessional district, such a course of action as that recommended by the majority in this case was not hinted at. The majority of the committee reported to the House of Representatives that the sitting member was not entitled to his seat, and that a new election should be held; but even that resolution, as we have stated, was voted down by the House. That the House of Delegates could, in any view of the testimony, adopt the recommendation of the majority of the committee, the undersigned cannot bring themselves to regard as within the range of possibilities.

The undersigned regret that they have been obliged, in the hasty preparation of this report, to extend it to this length. The testimony taken before the committee not yet being printed, we have thought it proper to make more extended reference to it than need have been done, if it was before the House at this time.

If a further justification is needed for these extended remarks, it is to be found in the vast importance of the subject under consideration.

They recommend the adoption of the following resolution:

Resolved, That in the opinion of this House, William H. Purnell is entitled to retain the office of Comptroller of the Treasury.

JOSHUA WILSON.
A. MEDDERS.

To the Honorable the House of Delegates of Maryland:

The undersigned, William H. Purnell, Comptroller of the Treasury of Maryland, by way of counter memorial or answer to the memorial of A. Lingan Jarrett, Esq., heretofore addressed to the Honorable the House of Delegates in reference to the election held in November last for Comptroller of the Treasury, respectfully represents to your Honorable Body:

That he admits the memorialist and this respondent were the only candidates for the said office presented at said election, and that the number of votes received by the said candidates respectively throughout the State of Maryland, in the several counties of the State and in the city of Baltimore, are correctly set forth in the said memorial.

He further admits that it appearing from the returns of said election made to the Governor of Maryland, that this respondent had received the greatest number of the votes cast for Comptroller, the Governor in obedience to the directions of the Constitution of the State issued to this respondent a commission as Comptroller; that he has duly qualified by taking and subscribing the oaths required by the Constitution and laws and giving bond, which has been duly approved as required by law, and that he has entered upon the discharge of the duties of said office as of right he ought to do.

This respondent, further answering, says, that he has no personal knowledge as to the alleged violence and intimidation of voters at said election in the city of Baltimore, and that no person more regrets the same, if any such did occur, than this respondent. Nor has this respondent any knowledge of the admission of illegal votes in his behalf at said election, or of the rejection of legal votes in behalf of the contestant, although he has heard that such was alleged to be the case. But he avers that he has also frequently heard and believes that many illegal votes were received in the said City at the said election in behalf of the contestant, and that many persons were prevented from voting at said election, who would have voted for this respondent, if they had been permitted to vote.

This respondent further represents that he has heard and believes that his name was printed as candidate for Comptroller on all the "American" tickets prepared to be voted and actually voted at the said election throughout the State, and he has also been informed and believes that his name was also printed on a large number of the Reform tickets prepared to be voted at said election in the city of Baltimore, and that

he actually received a large number of votes from persons who voted such Reform tickets, as is evidenced by the fact that his majority in said city exceeded the average majority of the American legislative ticket by one thousand votes. And he further avers it as his belief that his vote in said city would have been greatly larger than it appears to have been if all persons who intended to vote for this respondent at said election had deposited their votes, and this respondent is well satisfied from the representations of many intelligent persons, opposed to him politically, as well as from information derived from many voters in the said city of the highest respectability, that if there had been no disturbance or molestation of voters whatever in the said city at such election, this respondent would have been elected by a large majority over the said contestant.

He is advised and insists that according to the Constitution of Maryland the Comptroller of the Treasury is to be chosen by the qualified electors of the State at each election of members of the House of Delegates, and that no election of Comptroller is lawful if the votes taken in any particular district of the State, or the entire poll of any such district or city should be rejected from the count upon any pretext whatsoever. And he is advised that there is no power in the House of Delegates in the case of a contested election for Comptroller to reject the entire vote of the city of Baltimore, as is prayed by the said memorial, and thus allow the election of Comptroller to be made by the qualified electors of *part of the State*, instead of by the qualified electors of the entire State, as required by the said Constitution.

Further answering, this respondent says that he knows of no reason why the judges of election in the city of Baltimore at said election were not legally appointed, as is alleged in the said memorial, and he is advised and insists that any irregularity in their appointment, if the same were shown to exist, could not operate in law to vitiate and render null the legal votes deposited with such judges by the qualified electors, or to destroy the rights of an officer regularly elected by a majority of legal votes.

This respondent insists, that according to well established principles of justice and the rules of proceedure governing such cases if any investigation is to be entered into as to the hindrance of voters or other irregularities attendant upon the said election, this respondent is entitled to demand a general and full scrutiny of the polls throughout the whole State, as well as in the city of Baltimore; and to have each voter who it is alleged was kept from the polls in the said city by violence or intimidation, examined as to how he intended to

vote for Comptroller, and that unless such scrutiny is had the House of Delegates, acting in its judicial capacity, cannot decide intelligently as to the said election, and this respondent insists upon scrutiny being had, in accordance with immorial usage in such cases and his just rights under the laws of the land. And he further insists, that unless it shall appear after such scrutiny has been had, that *the excess* of legal votes which would have been cast for the contestant as alleged in said memorial over the legal votes which would have been cast for this respondent *when taken with* the excess of illegal votes cast for this respondent (as alleged in said memorial,) over the illegal votes cast for said contestant, constitutes a number greater than the official majority for this respondent as certified to the Governor, it will not be competent for the House of Delegates to declare that this respondent was not legally elected Comptroller of the Treasury.

And he is further advised and insists that in case this Honorable House should declare after such scrutiny as aforesaid, that this respondent was not legally elected Comptroller, the said House could not award the said office to the contestant, as is prayed in the said memorial, without a violation of the spirit and meaning of the Constitution and laws of this State, and departure of the immemorial practice in such cases in every county professing to be free. And he submits, that such action would in fact be an election of Comptroller of the Treasury, by the House of Delegates instead of an election by the qualified electors of the State, as prescribed by the Constitution as aforesaid, and he is advised that this Honorable House has no constitutional power or right to make such election of Comptroller.

This respondent is further advised that if this Honorable House after such full scrutiny, as aforesaid, should declare that he was not duly elected, it would seem that a new election should be thereupon had, but he is informed that no power has been given by the Constitution to order a new election in such case, and that therefore the vacancy in said office of Comptroller would be filled by the Governor, under the provisions of the Constitution in such cases made and provided.

And this respondent having fully answered the several allegations of the said memorial, prays that such scrutiny may be awarded, as aforesaid, and that this House may decide adversely to the prayer of the memorial of the said contestant, and as, &c.

W. H. PURNELL.

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